

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

## FY 2014 SHUTDOWN PLAN

Pursuant to Volume 13, Chapter 2, § 220.30 of the Guide to Judiciary Policy and the Director's memorandum dated September 24, 2013, this court adopts the following plan for operating during a Judiciary shutdown. A Judiciary shutdown occurs after all funding derived from fees and no-year appropriations has been exhausted<sup>1</sup> and a continuing resolution or appropriations bill is not enacted.

1. Declaration of Policy. The policy of the United States District Court for the District of Nebraska is that essential judicial branch activities will continue. The activities set forth in this plan are essential, and the employees who perform these duties are deemed essential.<sup>2</sup>
  - (a) Because the spirit of the Anti-Deficiency Act requires a very narrow interpretation regarding the performance of other functions by judicial branch personnel during a shutdown period, the only work considered essential and thus permissible includes:
    - (1) activities necessary to support the exercise of the Article III judicial power, i.e., the resolution of cases in which there is a constitutional or statutory grant of jurisdiction;

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<sup>1</sup>The Judiciary can continue operations with funding derived from all possible sources of fees and no-year appropriations as previously authorized by the Executive Committee of the Judicial Conference. On September 24, 2013, the AO estimated those funding sources would be available to continue operations for approximately ten business days. During this period, efforts should be made to implement an orderly shutdown to take effect after these funding sources are exhausted. An orderly shutdown is defined as having sufficient opportunity to protect and secure court property, typically of a three-hour or less duration. It is **not** defined as having sufficient opportunity to complete assigned tasks, projects, etc. If a shutdown occurs and employees are furloughed, all work of those employees ceases, court property is protected and secured, and employees are released.

<sup>2</sup> The AO's Office of General Counsel has issued an opinion that the salaries of Article III, bankruptcy, and magistrate judges would be payable notwithstanding a lapse in appropriations. The Judiciary would need to seek authorization from the Secretary of the Treasury to continue to pay these judges' salaries during a government shutdown. The AO is confident that the Secretary of the Treasury would authorize such prompt payment for Article III judges. It is less certain whether the Secretary of the Treasury would authorize the prompt payment of non-Article III judges' salaries during a Judiciary shutdown. If that was not authorized, the non-Article III judges' salaries would be paid retroactively upon the enactment of the Judiciary's appropriation act. Retroactive payment of salaries for government employees who perform essential work is expected to occur. It is unclear whether Congress would authorize such payments to employees who are furloughed.

- (2) emergency activities necessary for the safety of human life and the protection of property; and
- (3) activities otherwise authorized by law, either expressly or by necessary implication, including:
  - (A) items guaranteed by the Constitution (e.g., Article III judges' salaries);
  - (B) activities funded with available no-year appropriations (e.g., jury system<sup>3</sup> and federal defender program);
  - (C) entitlement programs (e.g., Judicial Survivors Annuities System, which is partly funded by judges' salaries); and
  - (D) minimal activities needed for an orderly shutdown of other official functions.
- (b) This court will continue to 1) hear and decide cases without interruption; 2) timely file and process all filings, motions, orders, emergency applications, and other litigation documents; 3) collect and deposit fees and costs into the Treasury; 4) accept and process new civil and criminal cases; 5) continue regular administration of the jury system, including payment of jurors; 6) produce reports on bail or release, or provide other services required by judges in the performance of their constitutional duties; 7) supervise potentially dangerous offenders (i.e., individuals under supervised release, probation, or parole) and provide needed treatment services; and 8) handle new cases or maintain existing cases, as necessary to assist the court in implementing its orders and judgments.
- (c) Staff will not perform functions that are unrelated to essential activities and set forth in this plan (e.g., ancillary administrative tasks, non-essential training, and other similar activities). The court will furlough, i.e., place in a temporary non-pay status because of lack of funds, any employees who perform duties that are not authorized by this plan. If any employees are to be furloughed, they must first have sufficient opportunity to protect and secure court property.
  - (1) Furloughed employees will not be paid unless Congress authorizes funding. After the shutdowns in 1995 and 1996, Congress enacted legislation specifically authorizing retroactive pay for both federal employees who worked in non-pay status as well as furloughed federal employees. However, there is no guarantee that the current Congress will authorize retroactive pay for furloughed federal employees in the event of a shutdown. Shutdown furloughs are not considered a break in service and are generally creditable for retaining benefits, except in long periods of absence.

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<sup>3</sup>Payments to jurors may be delayed during a Judiciary shutdown.

- (2) A furlough does place the employee in a non-pay status, thus possibly impacting payment of premiums for certain benefits if a shutdown is prolonged. The fact sheet, "Effects of Extended Leave Without Pay," may be to counsel employees about benefits and the impact of a furlough.
- (3) Staff who are furloughed cannot work voluntarily or be required to work. Staff performing essential functions and working in a non-pay status should expect to be paid once appropriations are enacted. Congress will have to take affirmative action to authorize pay for staff who are furloughed.
- (4) Employees may not take annual or sick leave instead of being furloughed because employees would still be in a pay status and funds would not be available for payment.
- (d) This court suspends all activities not authorized in this plan. These activities may include, but are not limited to, the following: 1) hiring employees and related pay actions; 2) purchasing equipment, supplies, and contractual services;<sup>4</sup> 3) entering into new contractual obligations; 4) performing non-essential administrative tasks; 5) compiling non-essential statistics; 6) training;<sup>5</sup> and 7) travel.
  - (1) The suspension of such activities will be carried out in an orderly manner to ensure that all records and statistics are preserved and secured, and that resumption of full activities will begin without limits once funding is restored.
- (e) The court will advise the following individuals of the level of services required to maintain continuing operation of the court system:
  - (1) U.S. Marshal, District of Nebraska;

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<sup>4</sup>Even if a contract is currently in place, any actions that would result in further expenses under the contract will be curtailed unless they are clearly in support of designated essential activities. Further, payment on any goods and services acquired during a lapse in appropriations could have payment delayed until funds become available through another continuing resolution or an appropriation. The court's Contracting Officer (CO) will notify contractors prior to an appropriations lapse as directed by the Procurement Management Division.

<sup>5</sup>All court personnel will conclude their travel and return to their normal duty station prior to shutdown. Travel can continue if it is deemed absolutely necessary to the performance of essential work (e.g., case resolution activities) as described in section 1(a) of this plan. If the travel is not required for purposes of an orderly shutdown, or if the individual is not performing essential work on travel, then the travel should not occur if it would incur further expense to the government.

- (2) Director, Federal Protective Service, Department of Homeland Security; and
- (3) Director, Public Building Service, U.S. General Services Administration.

2. Judges and Their Staffs.

- (a) Under the Constitution, judges are entitled to their salary, regardless of any lapse in appropriations, and will continue to work full-time. Each judge may employ staff, such as law clerks and judicial assistants, which this court finds essential to the resolution of cases.
- (b) Conferences, hearings, jury trials, and non-jury trials will continue to be conducted, and new cases will be accepted. Apart from pre-existing criteria such as the Speedy Trial Act, no distinctions or priorities will be drawn between criminal and civil cases. An exception may arise if the Department of Justice instructs U.S. attorneys to limit their appearances to those cases essential to the protection of life or property. The judges will be sympathetic to requests for continuances or other motions necessitated by phase-down activities in other governmental agencies.
- (c) Although most judges will employ their full complement of supporting personnel to perform constitutionally mandated duties, staff will not be employed or assigned to work on ancillary projects, such as preparing materials for an article or speech, or to perform non-essential administrative tasks.

3. Magistrate Judges and Their Staffs.

- (a) Because magistrate judges' salaries are fixed by statute, they may not be furloughed without pay and therefore should continue to work full-time during an appropriation lapse.
- (b) All routine judicial activities performed by magistrate judges, from the conduct of preliminary hearings to the exercise of delegated trial authority, will continue. Each judge may employ staff, such as law clerks and judicial assistants, which this court finds essential to the resolution of cases.

4. Clerk's Office.

- (a) This court finds that clerk's office staff who support the court in case-resolution activities are essential. These activities include, but are not limited to, the following: 1) ensuring the proper and timely processing of all filings, motions, orders, emergency applications, and other litigation documents; 2) collecting and depositing fees, costs, and criminal debt payments into the Treasury; 3) accepting and processing new civil and

criminal cases; and 4) performing regular administration and support to both petit and grand juries, including payment of jurors in accordance with pre-existing procedures.

- (b) The jury system will operate as necessary to assist the courts in the performance of Article III duties. Clerks and other personnel will provide their normal level of assistance.
- (c) The essential functions and employees performing these functions are listed below.
  - (1) Administration and Oversight of Office's Statutory Duties
    - (A) Clerk
    - (B) Chief Deputy Clerk
  - (2) Court Reporting and Recording
    - (A) Court Reporters
    - (B) Courtroom Deputies
    - (C) Case Management Specialists
  - (3) Interpreting
    - (A) Staff Court Interpreter
  - (4) Intake, Cashiering, Courtroom Support, Docketing, Quality Control, Case Management, and Records Management
    - (A) Operations Manager
    - (B) Operations Administrator
    - (C) Court Services Supervisor
    - (D) Courtroom Deputies
    - (E) Case Management Specialists
    - (F) Administrative Specialist
  - (5) Jury Management
    - (A) Jury Administrators
    - (B) Courtroom Deputies
    - (C) Case Management Specialists
- (d) The clerk and chief deputy clerk will determine the limited number of employees needed to perform essential functions 24 hours prior to an anticipated appropriations lapse, based on the court's schedule and essential work demand. All employees will be on call. Employees who are not required to report will be furloughed. The clerk and chief deputy clerk may move

employees on or off the essential list based on changing circumstances in the court and the length of the appropriations lapse.

5. Probation Office.

- (a) This court finds that the services of probation office staff in support of the exercise of the judicial power of the United States are essential.
- (b) Most activity of the probation offices will continue. If delayed, certain activities would pose a threat to the safety of human life and the protection of property. Thus, supervision of potentially dangerous defendants will be maintained and needed treatment services will be provided. Even in non-emergency situations, however, the probation office will continue to handle new cases or maintain existing cases, as necessary, to assist the court in implementing orders and judgments.
- (c) The essential functions and employees performing these functions are listed below.
  - (1) Administration and Oversight of Office's Statutory Duties
    - (A) Chief
    - (B) Deputy Chief
  - (2) Presentence Reports and Investigations
    - (A) Supervising Probation Officers
    - (B) Probation Officers
    - (C) Probation Officer Assistants
  - (3) Supervision
    - (A) Supervising Probation Officers
    - (B) Probation Officers
    - (C) Probation Officer Assistants
  - (4) Officer Support, Records Management, Case Management, and Quality Control
    - (A) Administrative Assistants
    - (B) Probation Support Technicians
    - (C) Community Resource Specialist
    - (D) Data Quality Analyst
    - (E) Senior Clerks
- (d) The chief and deputy chief will determine the limited number of employees needed to perform essential functions 24 hours prior to an anticipated

appropriations lapse, based on the court's schedule and essential work demand. All employees will be on call. Employees who are not required to report will be furloughed. The chief and deputy chief may move employees on or off the essential list based on changing circumstances in the court and the length of the appropriations lapse.

6. Pretrial Services Office.

- (a) This court finds that the services of pretrial services staff in support of the exercise of the judicial power of the United States are essential.
- (b) Most activities of the pretrial services office will continue. If delayed, certain activities would pose a threat to the safety of human life and the protection of property. Thus, supervision of potentially dangerous defendants will be maintained and needed treatment services will be provided. Even in non-emergency situations, however, the pretrial services office will continue to handle new cases or maintain existing cases, as necessary, to assist the court in implementing orders.
- (c) The essential functions and employees performing these functions are listed below.
  - (1) Administration and Oversight of Office's Statutory Duties
    - (A) Chief
    - (B) Supervising Pretrial Services Officer
  - (2) Pretrial Services Investigations and Supervision
    - (A) Pretrial Services Officers
    - (B) Pretrial Services Officer Assistants
  - (3) Officer Support and Quality Control
    - (A) Data Quality Analyst
- (d) The chief and supervising officer will determine the limited number of employees needed to perform essential functions 24 hours prior to an anticipated appropriations lapse, based on the court's schedule and essential work demand. All employees will be on call. Employees who are not required to report will be furloughed. The chief and supervising officer may move employees on or off the essential list based on changing circumstances in the court and the length of the appropriations lapse.

7. Shared Services.

- (a) This court finds that services needed to support the performance of essential duties for the judges, clerk's office, probation, and pretrial services will continue, and the shared services staff who perform these services are essential.
- (b) The essential functions and employees performing these functions are listed below.
  - (1) Information Technology: Maintenance and support of all systems needed to support essential functions.
    - (A) IT Director
    - (B) Automation Support Technician
    - (C) Programmers
    - (D) Court Technology Specialist
    - (E) PC Support Specialist
    - (F) PC System Administrator
    - (G) Help Desk/Software Trainer
  - (2) Administrative Services: Performance of duties related to essential duties of judges, clerk's office, probation, and pretrial services staff.
    - (A) Supervisor of Administrative Services
    - (B) Budget Analyst
    - (C) Financial Specialist
    - (D) Facilities/Procurement Technician
    - (E) Property/Procurement Specialist
    - (F) Financial Technician
    - (G) Accounting Technician
  - (3) Human Resources. Performance of duties related to essential duties of judges, clerk's office, probation, and pretrial services staff.
    - (A) HR Manager
    - (B) HR Specialist
- (d) The shared services management team will determine the limited number of employees needed to perform essential functions 24 hours prior to an anticipated appropriations lapse, based on the court's schedule and essential work demand. All employees will be on call. Employees who are not required to report will be furloughed. The shared services management team may move employees on or off the essential list based on changing circumstances in the court and the length of the appropriations lapse.



8. Public Defenders and Criminal Justice Act Attorneys.

- (a) Attorneys and essential support staff in federal defender offices and court-appointed counsel will continue to provide defense services, as needed.
- (b) Compensation of court-appointed counsel will be paid in accordance with Administrative Office's pre-existing procedures.
- (c) To the extent that public defenders and their staff experience a lack of work because U.S. attorneys terminate prosecutions, they will be furloughed. The federal defender will determine what personnel, if any, will not be needed.

9. Bankruptcy Court.

- (a) The bankruptcy court should continue those operations that may be considered part of the exercise of the judicial power of the United States or which preserve life or property in accordance with its shutdown plan.
- (b) Because their salaries are fixed by statute, bankruptcy judges may not be furloughed without pay, and therefore should continue to work full-time during an appropriations lapse.
- (c) The judges of each bankruptcy court will determine which bankruptcy court personnel will be needed.
- (d) Each bankruptcy judge should, to the extent practical, hear arguments and issue orders and judgments only in adversary proceedings, other controversies, or where essential to protect property.

### REVISION CONTROL LOG

Date	Comments	By
09/24/2013	Drafted and approved.	Shared Services Management Team
09/25/2013	Approved by the active article III judges.	